IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6889 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SONWANE BHIKAJIRAO NARAYANRAO & 2 - Petitioners
Versus
STATE OF GUJARAT & 4 - Respondents

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Appearance :
NOTICE SERVED for Petitioners.
MR LB DABHI, AGP for Respondent Nos. 1 - 2, 4,
NOTICE SERVED for Respondent(s) : 3, 5,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/01/2006

ORAL JUDGMENT

1.The petitioners have filed this petition under Article 226 of the Constitution of India praying for the direction to the respondents to release the amount of increments withheld till the final hearing of this petition and direct them not to withhold any of the increments of the petitioners thereafter for the reasons of not passing language examination and further to direct them to pay the arrears. The petitioners have also prayed for the direction to the respondent No. 1 to exempt the petitioners from passing the examination with effect from the date of joining the post along with the other persons who were exempted by the amendment of the Rule under 1972. The petitioners have also prayed for the declaration that the Gujarat Government Servants (lower Standard and Higher Standard – Gujarati Language Examination) Rules, 1970

amended in 1972 is ultravires – Art. 14 & 16 of the Constitution of India.

2.The petition was admitted by this Court and rule was issued on 29.12.1987. While admitting the petition, the Court has directed that this petition should be heard along with Special Civil Application No. 2266 of 1979 and other cognate Special Civil Applications. The Court has also granted interim relief in terms of para 27 (D) on condition that (i) the petitioners shall appear at every Gujarati & Hindi examination till they pass, (ii) the petitioners will restore the amount of increments and salary within three months from the order of the High Court in case the petitioners fail in this petition and (iii) the petitioners shall file an undertaking in that behalf within three weeks from the date of the order.

3.The petition was originally filed by the learned advocate Mr. R.V. Deshmukh who was later on elevated as a Member of the Educational Tribunal. Fresh notice was issued on the petitioners. Despite service of notice, nobody appeared on behalf of the petitioners.

4.There is a reference of three cognate matters, namely, Special Civil Applications No. 2266/79, 502/87 & 2055/87. The Court has asked the office to inform about the status of these three petitions. The office has put a note wherein it is stated that Special Civil Application No. 2266 of 1979 is already disposed of on 18.01.1990. Special Civil Application No. 502 of 1987 is placed before the Division Bench and it was last fixed on 28.09.2005. Special Civil Application No. 2055 of 1987 is already disposed of by the Court along with Special Civil Application No. 1494 of 1988 on 12.08.2005. Both these petitions

were dismissed for default.

5.In another cognate matter being Special Civil Application No. 1225 of 1988, this Court has passed an order on 06.07.2001 and the said petition was disposed off. While disposing off the said petition, the Court has observed that in view of the fact that during the pendency of the petition, the amount of increments withheld have already been paid to the petitioners and the petitioners have already appeared and passed the Gujarati language examination, no grievance survived. The Court has also ruled out the apprehension of the petitioners that the increments paid during the pendency of the petition may be sought to be recovered from them. The Court made it clear that the increments which were withheld on account of non-passing of Gujarati language examination cannot be now recovered in view of the fact that the petitioners have already cleared

Gujarati language examination.

6.In the present case, nobody appears on behalf of the petitioners. By way of interim relief, this Court has protected the petitioners and directed the respondents not to withhold their increments and directed the petitioners to appear in the examination till they pass. It appears that all these petitioners might have appeared and passed in the examination and they have no interest in pursuing this petition. As per the interim direction issued by this Court, the petitioners were directed to appear at every Gujarati & Hindi examination till they pass. The petitioners might have passed the examination. However, this fact has not come on record. The learned Assistant Government Pleader is also not in a position to place on record the correct status of the petitioners. In absence of requisite details, it is not possible for this Court to express any opinion

on the merits of the matter. At the same time, the benefits which have already been given to the petitioners should not be withdrawn as by this time, the petitioners might have retired.

7. Considering the above special facts and circumstances of the case, the Court is of the view that though the petition is dismissed for want of prosecution, no recovery of any amount should be enforced from the petitioners which have been granted pursuant to the interim order passed by this Court.

8. Subject to the aforesaid direction and observation, this petition is accordingly disposed of. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

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